

REMARKS/ARGUMENTS

Claims 22, 23, 24, 26 and 27 were presented for consideration in the present application. The instant amendment adds new claims 28 – 38. Thus, claims 22, 23, 24 and 26 – 38 are presented for consideration upon entry of the instant amendment.

Claims 22, 23, 24, 26 and 27 stand rejected under 35 U.S.C. §103(a) as being unpatentable over United States Patent Application No. D250,663 to Koch et al. (hereinafter “Koch”).

For at least the reasons set forth below, Applicants submit that claims 22, 23, 24, 26 and 27 are not disclosed or suggested by Koch. However, if for any reason the Examiner believes that the application is not in condition for allowance, Applicants’ attorney hereby requests a telephonic interview to further advance the prosecution of the application.

Independent claim 22 now provides a barrel for use with a tampon applicator assembly that includes, in relevant part, “a tapered main section disposed between an insertion tip and a finger grip (emphasis added)”.

In contrast to the tapered main section of claim 22, Koch discloses a barrel having a uniform outer dimension across the entire length of the main section of the barrel. The single FIGURE provided in Koch illustrates a tampon inserter that clearly fails to teach or suggest a barrel having a tapered main section.

The only features of Koch that have any resemblance of a taper, as provided in claim 22, are the insertion tip and the finger grip, and this is the crux of the weakness of the Office Action rejection.

The Office Action has failed to interpret the claimed "main section" and "insertion tip" in a manner consistent with the definition of these elements provided in the specification.

On page 7, paragraph 29 of the present application, it is provided, "insertion tip 20 and main section 22 intersect at a first plane 36, while the main section and finger grip 24 intersect at a second plane 38." Thus, the main section is from first plane 36 to second plane 38, as shown clearly in Fig. 4. The specification also provides that main section 22 has a "main section taper, which is defined as a ratio of dimension 50 at second plane 38 divided by dimension 42 at first plane 36." See page 8, paragraph 36.

Further, on page 6, paragraph 26 of the present application, the specification provides that "[b]arrel 14 is sub-divided into three sections, namely an insertion tip 20, a main section 22, and a finger grip 24." In fact, the specification even distinguishes the tapered outer dimension of the main section of the barrel (see page 8, paragraph 36) from the tapered outer dimension of the insertion tip (see page 7, paragraph 32). Clearly, the insertion tip 20, and its taper, is from its free end to first plane 36.

Thus, the present application clearly defines the main section 22 of the barrel as being separate from the insertion tip 20. Therefore, any reliance by the Office Action on the tapered insertion tip in Koch to satisfy the tapered main section recited in claim 22 is clearly flawed.

When one looks to the main section of the barrel provided in Koch, as depicted in the single FIGURE, the main section of the barrel is clearly uniform and lacks any taper. Therefore, Koch fails to disclose or suggest the tapered main section of claim 22.

Further, the Office Action provides no support for the conclusion that the main section of the applicator of Koch may be defined to include the tapered portion adjacent the tip. Applicants respectfully submit that the definitions of the main section of the barrel and the insertion tip clearly convey that they are distinct components. These components are well-known and well-defined in the art and are basic vocabulary for a person having ordinary skill in the art. As such, any rationale offered for this conclusion would contradict the way a person having ordinary skill in the art would define a main section of a barrel and an insertion tip.

In addition, independent claim 22 recites that the main section of the barrel includes, in relevant part, “a main section taper ratio of about 1.07 to about 1.15 (emphasis added)”.

Applicants respectfully submit that Koch fails to disclose or suggest a main section taper ratio of about 1.07 to about 1.15, as provided in claim 22. As discussed

above, when one looks to the main section (as main section is clearly defined in the present application) of Koch, as depicted in the single FIGURE, the main section of the barrel is clearly uniform and lacks any taper. Further, Applicants respectfully submit that the single FIGURE of Koch does not disclose the relative dimensions of the applicator shown.

The proportions of features in a drawing are not evidence of actual proportions when drawings are not to scale. See MPEP §2125. Also, "[a]bsent any written description in the specification of quantitative values, arguments based on measurement of a drawing are of little value." See *In re Wright*, 569 F.2d 1124, 193 USPQ 332 (CCPA 1977). In addition, "it is well established that patent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes if the specification is completely silent on the issue." See *Hockerson-Halberstadt, Inc. v. Avia Group Int'l*, 222 F.3d 951, 956, 55 USPQ2d 1487, 1491 (Fed. Cir. 2000).

Any reliance on the drawings of Koch to satisfy the main section taper ratio of about 1.07 to about 1.15, as recited in claim 22, is flawed. The single FIGURE in Koch and the disclosure in Koch fails to disclose quantitative values regarding a taper ratio. In fact, as discussed above, the single FIGURE fails to disclose a tapered main section, let alone a particular taper size or taper ratio. Even if the insertion tip of Koch is incorrectly argued as the "main section taper ratio", Koch clearly fails to disclose the taper ratio of about 1.07 to about 1.15 as recited in claim 22.

Also, the claimed taper ratio would not have been obvious to a person of ordinary skill in the art by optimizing the curvature of the inserter, as submitted by the Office Action. The tapered main section of the barrel provides benefits in addition to the benefits provided by the tapered insertion tip. For example, the present application explicitly provides that “[t]his tapering of main section 22 facilitates insertion comfort by gradually parting the vulva-vaginal channel over a longer length of barrel 14 than that of only insertion tip 20.” See page 9, paragraph 38. Thus, the combination of a barrel for use with a tampon applicator assembly having a tapered main section with a taper ratio of about 1.07 to about 1.15 leads to a result that was unpredictable and therefore, the combination was not obvious.

Accordingly, Applicants respectfully submit that Koch fails to disclose or suggest independent claim 22. As such, claim 22, as well as claims 23, 24, 26 and 27 that depend therefrom, are in condition for allowance. Reconsideration and withdrawal of the rejection to claims 22, 23, 24, 26 and 27 are respectfully requested.

In addition, claim 23, which is dependent from independent claim 22, is also believed to be in condition for allowance over Koch for the following reason.

Claim 23 provides that the maximum outer dimension, defined by the intersection of the first region of the finger grip and the main section of the barrel, “is located closer to said finger grip than to said insertion tip (emphasis added).” The present application teaches that the outer dimension is tapered “from a maximum outer dimension 50 at

second plane 38 to a minimum outer dimension 42 at first plane 36.” See page 8, paragraph 35.

Applicants respectfully submit that the Office Action has continuously failed to show where Koch shows the feature of claim 23 that the “maximum outer dimension is located closer to said finger grip than to said insertion tip.” The single FIGURE in Koch shows no indication that the maximum outer dimension is different at any point closer to the insertion tip than it is at any point closer to the finger grip. In fact, the uniform outer dimension across the entire length of the main section of the barrel illustrated in the single FIGURE of Koch fails to show even the slightest resemblance of a maximum outer dimension that is “closer to said finger grip than to said insertion tip”, as recited by claim 23.

Thus, Koch clearly does not disclose or suggest a maximum outer dimension that is closer to the finger grip than to the insertion tip. Reconsideration and withdrawal of the rejection to claim 23 are respectfully requested for this reason as well.

In addition, claim 26, which is dependent from independent claim 22, is also believed to be in condition for allowance over Koch for the following reason.

Claim 26 provides that the insertion tip has a “taper ratio of more than about 0.66 (emphasis added)”. Thus, claim 26 provides both a tapered main section and a tapered insertion tip.

As discussed in detail above with respect to independent claim 22, the present application clearly defines the beginning and ending of the main section and the insertion tip. Applying the definitions of these components to the disclosure in Koch clearly shows that Koch does not have both a tapered main section and a tapered insertion tip. Koch, as acknowledged in the Office Action, shows two tapered portions that include a first taper toward the insertion end and a second taper toward the plunger end. When one looks to the main section of Koch, as depicted in the single FIGURE, the main section of the barrel is clearly uniform and lacks any taper.

As discussed above with respect to claim 22, any reliance on the single FIGURE of Koch to satisfy the insertion tip having a taper ratio of more than about 0.66 is flawed. The single FIGURE in Koch fails to disclose quantitative values regarding a particular taper size or taper ratio. Further, Koch is clearly not shown in the same complete detail as is contained in the present application.

Thus, Koch clearly does not disclose or suggest the tapered main section and tapered insertion tip of claim 26. Reconsideration and withdrawal of the rejection to claim 26 are respectfully requested for this reason as well.

In addition, claim 27, which is dependent from independent claim 22, is also believed to be in condition for allowance over Koch for the following reason.

Claim 27 provides a tampon applicator assembly that includes, in relevant part, a plurality of petals having “a petal length-to-width ratio over about 2 to about 3 (emphasis added)”.

Applicants respectfully submit that Koch fails to disclose or suggest a plurality of petals having a petal length-to-width ratio over about 2 to about 3. When one looks to the insertion tip of Koch, as depicted in the single FIGURE, the FIGURE fails to show any quantitative values for the petal length-to-width ratio.

Further, the Office Action fails to indicate where Koch discloses a plurality of petals having a petal length-to-width ratio over about 2 to about 3. Applicants respectfully submit that the single FIGURE of Koch fails to disclose the relative dimensions of the applicator shown.

As discussed above with respect to claims 22, 23 and 26, any reliance on the drawings of Koch to satisfy a plurality of petals having a petal length-to-width ratio over about 2 to about 3 is flawed. Again, the single FIGURE in Koch fails to disclose quantitative values regarding a particular petal length-to-width ratio. Further, Koch is clearly not shown in the same complete detail as is contained in the present application.

Claims 28 – 38 have been added to point out various aspects of the present application. It is submitted that new claims 28 – 38 are directed to the elected embodiment. Support for new claims 28 – 38 can be found in the specification at least

at page 8, paragraph 35 (claim 28); page 9, paragraph 37 (claims 29 and 30); page 8, paragraph 36 (claims 31 and 32); page 6, paragraph 27 (claim 33); page 8, paragraph 32 (claims 34 and 35); page 8, paragraph 33 (claims 36 and 37); and page 11, paragraph 45 (claim 38).

It is believed that new claims 28 – 38 are in condition for allowance. For example, independent claim 28 recites, in part, “a tapered main section disposed between an insertion tip and a finger grip, said tapered main section having a maximum outer dimension located closer to said finger grip than to said insertion tip (emphasis added)”.

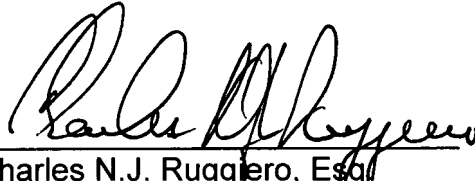
Applicants respectfully submit that the cited art fails to recite the combination now claimed. Accordingly, independent claim 28, as well as claims 29 – 38 that depend therefrom are in condition for allowance.

In view of the above, it is respectfully submitted that the present application is in condition for allowance. Such action is solicited.

In the alternative, it is believed that the instant amendment places the present application in better condition for appeal. Accordingly, entry and consideration of the instant amendment, at least for the purposes of appeal, are respectfully requested.

If for any reason the Examiner feels that consultation with Applicants' attorney would be helpful in the advancement of the prosecution, the Examiner is invited to call the telephone number below.

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